Supreme Court, U.S.
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No. 78-485

In the Supreme Court of the United States

OCTOBER TERM, 1978

TEXAS COMMITTEE ON NATURAL RESOURCES,
PETITIONER

v.

BOB BERGLAND, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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The petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on May 8, 1978 (Pet. 2). The petition for rehearing was denied on June 22, 1978 (Pet. 2). The time for filing a petition for a writ of certiorari was not extended, and, accordingly, the 90-day period provided in 28 U.S.C. 2101(c) expired on September 20, 1978. The petition was filed on September 21, 1978.

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 417-418 (1923).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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